

## REMARKS

Claims 1-2, 4-7, 9-17, 19-22, 24-27, 29-30, 32-36, and 38 are pending in the application. No claims have been amended, cancelled, or newly added. In view of the following Remarks, allowance of all the pending claims is requested.

### FINALITY OF THE OFFICE ACTION

Applicants note that the outstanding Office Action contains numerous inconsistencies, and does not clearly set forth the grounds of rejection. As a result, Applicants are unable to clearly identify the nature or existence of any issues for Appeal. For at least this reason the Office Action has improperly been made final, and Applicants therefore request the Examiner withdraw the finality of the Office Action.

For example, the Office Action Summary does not clearly set forth whether the Office Action is final or non-final, as the Examiner has checked boxes indicating both final and non-final status. See Office Action Summary, Boxes 2a-b. For at least this reason, the finality is improper because the Examiner has failed to clearly establish the status of the Office Action.

Moreover, the Examiner has failed to clearly establish the grounds of rejection in a way that would enable Applicants to judge the advisability of an Appeal. See, e.g., MPEP § 706.07. In the Detailed Action portion of the Office Action (i.e., beginning on Page 2), the Examiner indicates that the claims have been rejected under 35 U.S.C. § 103. However, below the recitation of the statutory basis for § 103, the Examiner indicates that various claims have been rejected under 35 U.S.C. § 102(e). Subsequently, on Page 3 of the Office Action, the Examiner indicates that “Wall/Papadopoulos does not expressly disclose” certain features of the claimed invention, while Bullen has been relied upon as allegedly teaching certain features.

Thus, if the Examiner intended the rejection to be under § 102, as indicated by the heading of the rejection, then the rejection is clearly improper for at least the reason that multiple references are relied upon, and further because the Examiner acknowledges that a single reference does not disclose every feature.

Alternatively, if the Examiner intended the rejection to be under § 103, the rejection would still be improper because the Examiner has not clearly established which references are relied upon, or what those references allegedly teach. For example, the Examiner's statement that "Wall/Papadopoulos does not expressly disclose" would seem to indicate that each of Wall and Papadopoulos are relied upon in the rejection. Further, on Page 4, the Examiner alleges that it would have been obvious to combine the teachings of Bullen "into the invention of Wall/Papadopolous." However, in making this purported § 103 rejection, the Examiner has not discussed Papadopolous in any manner whatsoever, other than as indicated herein.

Furthermore, the basis for the subsequent rejections also appear to be inconsistent with the rejection presented beginning on Page 2. For example, the rejection beginning on Page 6 rejects various claims as allegedly being unpatentable over Wall in view of Papadopolous, yet this rejection does not include Bullen, as would appear to be necessary based on the rejection beginning on Page 2. Similar inconsistencies exist with regard to the rejections presented on Pages 7-8.

As such, the Office Action contains numerous inconsistencies, at least with respect to the grounds of rejection presented. Accordingly, Applicants have little to no basis with which to judge what references are relied upon in the rejections, nor what the Examiner alleges the references to teach. Thus, for at least these reasons, the Examiner has failed to clearly develop the grounds of rejection in a way that would enable Applicants to judge the merits of the rejection, or in a way that clearly identifies the issues for Appeal. For at least these reasons, the finality of the Office Action is improper, and Applicants therefore request the finality be withdrawn.

### **REJECTION UNDER 35 U.S.C. § 103**

As discussed above, Applicants are unable to clearly determine the grounds of rejection presented in the outstanding Office Action. However, solely for purposes of responding to the Office Action, Applicants will assume that the rejection presented beginning on Page 2 of the Office Action was intended to be based on § 103. Further, because the Examiner does not

discuss Papadopolous in any substantive manner, Applicants will assume that the claims stand rejected as follows:

- (1) Claims 1, 4-6, 9-12, 14-17, 19-21, 24-26, 29-30, 32-36, and 38 appear to be rejected under § 103 as allegedly being unpatentable over U.S. Patent No. 6,371,765 to Wall et al. (“Wall”) in view of U.S. Patent No. 6,033,226 to Bullen (“Bullen”);
- (2) Claims 2, 7, 13, 22, and 27 appear to be rejected under § 103 as allegedly being unpatentable over Wall in view of Bullen, and further in view of U.S. Patent No. 6,099,320 to Papadopoulos (“Papadopoulos”); and
- (3) Claims 32-36 and 38 appear to be rejected under § 103 as allegedly being unpatentable over Wall in view Bullen, and further in view of U.S. Patent No. 6,075,938 to Bugnion et al. (“Bugnion”).

Applicants traverse each of the foregoing rejections because the Examiner has failed to establish a *prima facie* case of obviousness, for at least the reason that the references relied upon, either alone or in combination, do not disclose, teach, or suggest all the features of the claimed invention.

More particularly, the references relied upon, either alone or in combination, do not disclose, teach, or suggest at least the feature of “comparing the new state with an expected new state for the IT exercise to evaluate how well the user performed the IT exercise,” as recited in claim 1, for example. The Examiner acknowledges that “Wall/Papadopoulos [sic] does not disclose . . . evaluating how well the user performed the IT exercise.” Office Action at 3. Thus, for at least this reason, Wall does not disclose, teach, or suggest at least this feature of the claimed invention. However, the Examiner alleges that Bullen teaches this feature of the claimed invention at col. 10, lines 32-44. Applicants disagree with the Examiner’s assessment.

For instance, in Applicants’ invention, “tasks performed by the user on the set of virtual machine files” have a result of placing “one or more of the plurality of virtual machines into a new state.” As such, “the new state” can be compared to “an expected new state for [an] IT exercise to evaluate how well the user performed the IT exercise.” In other words, a user performing one or more tasks relating to an information technology exercise places a virtual

machine into a new state. The new state provides a point of comparison for evaluating a user's performance relating to the information technology exercise, for example, by comparing the new virtual machine state to a state that would be expected (e.g., based on one or more performance evaluating criteria).

By contrast, Bullen relates to a multi-media training system that can teach an operator how to use a machining tool, or some other type of physical tool or device. Notably, Bullen does not discuss information technology exercises, or virtual machines states. By contrast, Bullen relates to a system that can train an operator to use machining tools, "such as would be expected to be performed by an expert machine operator, including for example, drill bit spin rate (RPM), drill bit velocity (e.g., toward the workpiece) and so forth" (col. 10, lines 18-26). Thus, even though Bullen discusses comparing parameters of a user's operation "with the templates of the ideal operations . . . to determine how well the trainee is doing and to determine what kinds of errors he may be committing," the comparison is based on geometric models relating to physical characteristics of machine tools, not virtual machine states.

For example, Bullen indicates that the comparisons include geometrically analyzing machine movements to compare relative positions of "the drill bit and the workpiece" (col. 10, lines 32-39), or "velocity of a drill bit through a workpiece" (col. 10, lines 44-47), among other things relating to machine tools. Comparing physical movements of a machine tool, however, does not relate to "comparing the new state [of a virtual machine] with an expected new state for the IT exercise." Thus, for at least this reason, Bullen does not disclose, teach, or suggest at least the feature of "comparing the new state [of a virtual machine] with an expected new state for the IT exercise to evaluate how well the user performed the IT exercise," as recited in claim 1, for example. Further, for at least the same reasons, Wall and Bullen, either alone or in combination, fail to disclose, teach, or suggest at least every feature of claim 1.

Papadopoulos and Bugnion each fail to cure the deficiencies of Wall and Bullen discussed above. For example, the Examiner appears to acknowledge that Papadopoulos does not disclose, teach, or suggest this feature on Page 3 of the Office Action. Moreover, other portions of the Office Action only appear to indicate that Papadopoulos is relied upon as allegedly teaching digital timers associated with a question on a test. E.g., Office Action at 7.

Furthermore, the Examiner only appears to rely upon Bugnion as allegedly teaching multiple virtual machines running independent operating systems and application programs. *E.g.*, Office Action at 8.

Thus, for at least the foregoing reasons, Wall, Bullen, Papadopoulos, and Bugnion, either alone or in combination, do not disclose, teach, or suggest at least the feature of “comparing the new state with an expected new state for the IT exercise to evaluate how well the user performed the IT exercise,” as recited in claim 1, for example..

Claims 6, 12, 17, 21, and 26 include features similar to those set forth in claim 1. Claims 4-6, 9-11, 14-16, 19-20, 24-25, 29-30, 32-36, and 38 depend from and add features to one of claims 1, 6, 12, 17, 21, and 26. Thus, the rejections of these claims are likewise improper and must be withdrawn for at least the same reasons.

## CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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